

at least one screw hole.

30. The anchoring biscuit device of claim 29 wherein said top element and said vertical support member are uni-structurally formed.--

REMARKS

Claims 23 through 27 were submitted by amendment in response to the first Office Action dated November 18, 1997. The earlier pending claims had been rejected under 35 U.S.C. § 102, as unpatentable over Bischof (5,529,428). Based on arguments and amendments submitted on December 5, 1997, this rejection was removed and the Examiner now states that the addition of new claims 23 through 27 submitted on December 5, 1997 necessitated new grounds for rejection and made the Office Action of January 20, 1998 a Final Rejection, even though the amendments merely narrowed the original claims! In fact, however, it is believed that the arguments submitted on December 5, 1997 overcame the Bischof rejection and that this latest rejection should not have been made final.

Nonetheless, in the Office Action of January 20, 1998, in which the rejection was made Final, the Examiner made three new rejections:

a) Claims 23 and 24 now stand rejected under 35 U.S.C. § 102(e) based on Erwin et al;

b) Claims 23 through 27 now stand rejected under 35050C102(b) based on Ellinwood; and,

c). Claims 25 through 27 now stand rejected under 35 U.S.C. § 103(a) based on Erwin et al in view of Bischof.

We wish to respond as follows:

I. 35 U.S.C. § 102(e) Rejection
Based On Erwin et al

Erwin et al is directed to a foam-filled extruded decking attachment system which utilized a hold down block (90, Figure 1). Erwin et al is not directed to biscuit-based elements, nowhere suggests or renders obvious the use of biscuit elements and, in fact, teaches away from biscuits by using a "block". Biscuits are clearly defined in the carpentry and construction art and differ from splines and blocks by their inherent arcuated shape. Erwin et al requires a block having the same type configuration as the extruded plastic planks. Because they are continuously extruded (column 3, line 55; column 4, line 17, and elsewhere), their cross-section cannot vary and cannot have biscuit cuts to receive biscuit shaped ties. The present invention is, on the other hand, used with planks having biscuit cuts, e.g. in lumber, formed by a biscuit cutter. Thus, not only does Erwin et al fail to teach biscuits, as required in a proper 35 U.S.C. § 102 rejection, but Erwin et al could not be relied upon to even suggest the obviousness of biscuit-shaped ties but it would be contrary to the teachings and purpose of the extruded planks and matching blocks set forth therein. In fact, biscuits would cut down on surface area contact, would be weaker and would not be obvious

to one of ordinary skill in the art, or even be practical in a continuous extruded flat engaging grooves as in Erwin et al.

Hence, this rejection on Erwin et al under 35 U.S.C. § 102 as stated, or even under 35 U.S.C. § 103, is inappropriate and should be withdrawn, especially in view of the newly submitted, clearly explicit claims.

II. 35 U.S.C. § 102(b) Rejection Based On Ellinwood

Ellinwood teaches the use of T-like continuous splines for joinder of abutted panels to rafters or studs. These splines usually run the full length of the studs and even when they do not, Ellinwood states that an important feature is the dimensional relation of this connecting member to the grooves in which it is fitted (column 1, line 46 et seq.), that the connecting member (the spline) has a shape corresponding to the grooves and space of the panels (column 1, line 49 et seq.). These grooves are continuous and flat (see e.g. the Figures of Ellinwood) and that the connecting member be snugly received by the respective groove. None of this teaches or suggests the use of biscuits or biscuit-shaped connection members, but rather, again as with Erwin et al, has specific needs and objectives which teach away from biscuit (arcuate) shapes.

Thus, the rejection, under 35 U.S.C. § 102 or even an obviousness rejection under 35 U.S.C. § 103, would be inappropriate and should be withdrawn.

III. 35 U.S.C. § 103 Rejection Based On Erwin
et al In View Of Bischof

Erwin et al is discussed in detail above and its significant shortcomings are stated. The Bischof secondary reference does not overcome the Erwin et al deficiencies.

Bischof is directed to a metallic structural element for connecting work pieces consisting of wood, woodworking material or plastic which includes a lamellar part and a bolt-like part. The lamellar part provides a non-positive connection with a first workpiece provided with a groove and a transverse hole. The bolt-like part, through screwing or pinning, attaches the non-positive connection with the second workpiece via a longitudinal hole. In other words, the Bischof connector is a half biscuit with a planar extended screw and a traverse locking hole. It is completely different from the present invention and teaches totally away from the present invention. However, the Examiner relies upon Bischof to reject the claims under 35 U.S.C. § 103 in conjunction with Erwin et al on the basis that it would be obvious to change Erwin's device to be arcuated to reduce friction. However, this is contrary to the teachings of the main reference and is inferior and structurally different from the present invention device as claimed. More specifically, and referring to Figure 9 of Bischof, it is true that one end plate is arc-shaped on both sides and thus biscuit-shaped. However, stop part 25 is a solid section running the entire length of the end plate and a screw could not pass through cut-out 28 to fasten the device

to anything. Stop 25 (the "vertical support member") must be solid under hole 28 to present the center mark 29. Thus, Figure 9 of Bischof shows a device which is structurally different from the present invention, serves a different purpose and achieves a different result. Even a 35 U.S.C. § 103 rejection would be inappropriate because it would not be obvious to modify a cutting and drilling template into a joiner device, especially since Bischof already teaches a joiner device which is totally different from the present invention.

It is important to note that both the primary reference to Erwin et al and the secondary reference to Bischof show complete matching of the insertable tie and the receiving board. It is recognized throughout the art (see, e.g., Ellinwood which talks of "snug" fitting of the groove and connecting element) that boards stay fitted when connectors and receivers are male-female matching. The hindsight argument to put a biscuit into a flat groove is nowhere taught or suggested in either reference and is not obvious.

Additionally, even the idea of combining Erwin et al's teachings with Bischof's teachings is inappropriate because Erwin et al is anchoring extruded planks with necessarily flat grooves which cannot be extruded as female biscuit (arcuate) slots, and Bischof is using a half biscuit for end-to-end wood construction. While they have the similar areas of classification, they are technically not analogous. One of

ordinary skill in the art of extruded planking would not look to biscuit or half-biscuit technology for joining extruded planks because it is impossible to extrude arcuated cut-outs and surface to surface (snug) fitting is desired.

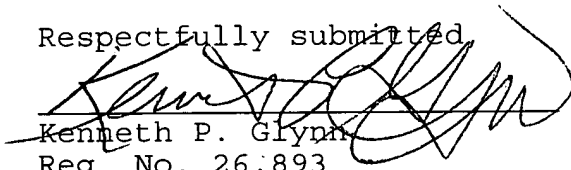
Thus, this rejection should be withdrawn.

It is urged that, in view of the above amendments and comments, claims 28 through 30 be deemed allowable. An early and favorable response is earnestly solicited. Thank you.

Dated: March 3, 1998

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Enclosures
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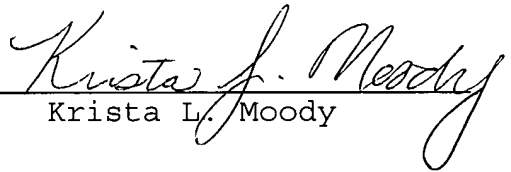
Respectfully submitted



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